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2 capital instruments under this section.<sup>18</sup>

(x) Redemption of the instrument prior to maturity or repurchase requires the prior approval of the Board.

(xi) For an advanced approaches Board-regulated institution, the governing agreement, offering circular, or prospectus of an instrument issued after the date on which the advanced approaches Board-regulated institution becomes subject to this part under §217.1(f) must disclose that the holders of the instrument may be fully subordinated to interests held by the U.S. government in the event that the Board-regulated institution enters into a receivership, insolvency, liquidation, or similar proceeding.

(2) Total capital minority interest, subject to the limitations set forth in §217.21(e), that is not included in the Board-regulated institution's tier 1 capital.

(3) ALLL up to 1.25 percent of the Board-regulated institution's standardized total risk-weighted assets not including any amount of the ALLL (and excluding in the case of a market risk Board-regulated institution, its standardized market risk-weighted assets).

(4) Any instrument that qualified as tier 2 capital under the Board's general risk-based capital rules under 12 CFR part 208, appendix A, 12 CFR part 225, appendix A as then in effect, that were issued under the Small Business Jobs Act of 2010,<sup>19</sup> or prior to October 4, 2010, under the Emergency Economic Stabilization Act of 2008.<sup>20</sup>

(5) For a Board-regulated institution that makes an AOCI opt-out election (as defined in paragraph (b)(2) of this section), 45 percent of pretax net unrealized gains on available-for-sale preferred stock classified as an equity security under GAAP and available-for-sale equity exposures.

(6) Notwithstanding the criteria for tier 2 capital instruments referenced above, an instrument with terms that provide that the instrument may be called earlier than five years upon the

occurrence of a rating agency event does not violate the criterion in paragraph (d)(1)(v) of this section provided that the instrument was issued and included in a Board-regulated institution's tier 1 or tier 2 capital prior to January 1, 2014, and that such instrument satisfies all other criteria under this paragraph (d).

(e) *Board approval of a capital element.*

(1) A Board-regulated institution must receive Board prior approval to include a capital element (as listed in this section) in its common equity tier 1 capital, additional tier 1 capital, or tier 2 capital unless the element:

(i) Was included in a Board-regulated institution's tier 1 capital or tier 2 capital prior to May 19, 2010 in accordance with the Board's risk-based capital rules that were effective as of that date and the underlying instrument may continue to be included under the criteria set forth in this section; or

(ii) Is equivalent, in terms of capital quality and ability to absorb losses with respect to all material terms, to a regulatory capital element the Board determined may be included in regulatory capital pursuant to paragraph (e)(3) of this section.

(2) When considering whether a Board-regulated institution may include a regulatory capital element in its common equity tier 1 capital, additional tier 1 capital, or tier 2 capital, the Federal Reserve Board will consult with the FDIC and OCC.

(3) After determining that a regulatory capital element may be included in a Board-regulated institution's common equity tier 1 capital, additional tier 1 capital, or tier 2 capital, the Board will make its decision publicly available, including a brief description of the material terms of the regulatory capital element and the rationale for the determination.

[Reg. Q, 78 FR 62157 and 62285, Oct. 11, 2013, as amended at 78 FR 62286, Oct. 11, 2013; 78 FR 76973, Dec. 20, 2013; 79 FR 78295, Dec. 30, 2014]

### §217.21 Minority interest.

(a) *Applicability.* For purposes of §217.20, a Board-regulated institution is subject to the minority interest limitations in this section if:

(1) A consolidated subsidiary of the Board-regulated institution has issued

<sup>18</sup> A Board-regulated institution may disregard *de minimis* assets related to the operation of the issuing entity for purposes of this criterion.

<sup>19</sup> Public Law 111-240; 124 Stat. 2504 (2010).

<sup>20</sup> Public Law 110-343, 122 Stat. 3765 (2008).

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regulatory capital that is not owned by the Board-regulated institution; and

(2) For each relevant regulatory capital ratio of the consolidated subsidiary, the ratio exceeds the sum of the subsidiary's minimum regulatory capital requirements plus its capital conservation buffer.

(b) *Difference in capital adequacy standards at the subsidiary level.* For purposes of the minority interest calculations in this section, if the consolidated subsidiary issuing the capital is not subject to capital adequacy standards similar to those of the Board-regulated institution, the Board-regulated institution must assume that the capital adequacy standards of the Board-regulated institution apply to the subsidiary.

(c) *Common equity tier 1 minority interest includable in the common equity tier 1 capital of the Board-regulated institution.* For each consolidated subsidiary of a Board-regulated institution, the amount of common equity tier 1 minority interest the Board-regulated institution may include in common equity tier 1 capital is equal to:

(1) The common equity tier 1 minority interest of the subsidiary; minus

(2) The percentage of the subsidiary's common equity tier 1 capital that is not owned by the Board-regulated institution, multiplied by the difference between the common equity tier 1 capital of the subsidiary and the lower of:

(i) The amount of common equity tier 1 capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under §217.11 or equivalent standards established by the subsidiary's home country supervisor; or

(ii)(A) The standardized total risk-weighted assets of the Board-regulated institution that relate to the subsidiary multiplied by

(B) The common equity tier 1 capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under §217.11 or equivalent standards established by the subsidiary's home country supervisor.

(d) *Tier 1 minority interest includable in the tier 1 capital of the Board-regulated*

*institution.* For each consolidated subsidiary of the Board-regulated institution, the amount of tier 1 minority interest the Board-regulated institution may include in tier 1 capital is equal to:

(1) The tier 1 minority interest of the subsidiary; minus

(2) The percentage of the subsidiary's tier 1 capital that is not owned by the Board-regulated institution multiplied by the difference between the tier 1 capital of the subsidiary and the lower of:

(i) The amount of tier 1 capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under §217.11 or equivalent standards established by the subsidiary's home country supervisor, or

(ii)(A) The standardized total risk-weighted assets of the Board-regulated institution that relate to the subsidiary multiplied by

(B) The tier 1 capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under §217.11 or equivalent standards established by the subsidiary's home country supervisor.

(e) *Total capital minority interest includable in the total capital of the Board-regulated institution.* For each consolidated subsidiary of the Board-regulated institution, the amount of total capital minority interest the Board-regulated institution may include in total capital is equal to:

(1) The total capital minority interest of the subsidiary; minus

(2) The percentage of the subsidiary's total capital that is not owned by the Board-regulated institution multiplied by the difference between the total capital of the subsidiary and the lower of:

(i) The amount of total capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under §217.11 or equivalent standards established by the subsidiary's home country supervisor, or

(ii)(A) The standardized total risk-weighted assets of the Board-regulated

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institution that relate to the subsidiary multiplied by

(B) The total capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under §217.11 or equivalent standards established by the subsidiary's home country supervisor.

### §217.22 Regulatory capital adjustments and deductions.

(a) *Regulatory capital deductions from common equity tier 1 capital.* A Board-regulated institution must deduct from the sum of its common equity tier 1 capital elements the items set forth in this paragraph (a):

(1) Goodwill, net of associated deferred tax liabilities (DTLs) in accordance with paragraph (e) of this section, including goodwill that is embedded in the valuation of a significant investment in the capital of an unconsolidated financial institution in the form of common stock (and that is reflected in the consolidated financial statements of the Board-regulated institution), in accordance with paragraph (d) of this section;

(2) Intangible assets, other than MSAs, net of associated DTLs in accordance with paragraph (e) of this section;

(3) Deferred tax assets (DTAs) that arise from net operating loss and tax credit carryforwards net of any related valuation allowances and net of DTLs in accordance with paragraph (e) of this section;

(4) Any gain-on-sale in connection with a securitization exposure;

(5)(i) Any defined benefit pension fund net asset, net of any associated DTL in accordance with paragraph (e) of this section, held by a depository institution holding company. With the prior approval of the Board, this deduction is not required for any defined benefit pension fund net asset to the extent the depository institution holding company has unrestricted and unfettered access to the assets in that fund.

(ii) For an insured depository institution, no deduction is required.

(iii) A Board-regulated institution must risk weight any portion of the defined benefit pension fund asset that is

not deducted under paragraphs (a)(5)(i) or (a)(5)(ii) of this section as if the Board-regulated institution directly holds a proportional ownership share of each exposure in the defined benefit pension fund.

(6) For an advanced approaches Board-regulated institution that has completed the parallel run process and that has received notification from the Board pursuant to §217.121(d), the amount of expected credit loss that exceeds its eligible credit reserves; and

(7) *Financial subsidiaries.* (i) A state member bank must deduct the aggregate amount of its outstanding equity investment, including retained earnings, in its financial subsidiaries (as defined in 12 CFR 208.77) and may not consolidate the assets and liabilities of a financial subsidiary with those of the state member bank.

(ii) No other deduction is required under §217.22(c) for investments in the capital instruments of financial subsidiaries.

(b) *Regulatory adjustments to common equity tier 1 capital.* (1) A Board-regulated institution must adjust the sum of common equity tier 1 capital elements pursuant to the requirements set forth in this paragraph (b). Such adjustments to common equity tier 1 capital must be made net of the associated deferred tax effects.

(i) A Board-regulated institution that makes an AOCI opt-out election (as defined in paragraph (b)(2) of this section), must make the adjustments required under §217.22(b)(2)(i).

(ii) A Board-regulated institution that is an advanced approaches Board-regulated institution, and a Board-regulated institution that has not made an AOCI opt-out election (as defined in paragraph (b)(2) of this section), must deduct any accumulated net gains and add any accumulated net losses on cash flow hedges included in AOCI that relate to the hedging of items that are not recognized at fair value on the balance sheet.

(iii) A Board-regulated institution must deduct any net gain and add any net loss related to changes in the fair value of liabilities that are due to changes in the Board-regulated institution's own credit risk. An advanced approaches Board-regulated institution